IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1866 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARSHOTAMDAS A PATEL

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:

1. Special Civil Application No. 1866 of 2001

MR AM PAREKH for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 12/09/2003

ORAL JUDGEMENT

In this petition, the petitioner who had guaranteed repayment of debt of Hariom Chemicals Pvt.,

Ltd., has challenged the validity of a notice dated 18.12.1999 issued to him by respondent no.1 Corporation.

2. The facts giving rise to the present petition in a nutshell are as under :-

2.1. Hariom Chemicals Pvt., Ltd., had made a request to respondent no.1 to give a term loan of Rs.42.40 lakhs and the said request of Hariom Chemicals Pvt., Ltd., had been granted by respondent no.1. on 22.12.1994. The petitioner and five other persons had guaranteed repayment of the said loan and had also executed necessary guarantee deed to that effect. Moreover, eight directors of Hariom Chemicals Pvt., Ltd., had also guaranteed repayment of the said loan.

3. Hariom Chemicals Pvt., Ltd., failed to repay its dues to respondent no.1 and, therefore, respondent no.1 had initiated proceedings under the provisions of State Financial Corporation Act, 1951 (hereinafter referred to as "the Act"). By having recourse to the provisions, of the said Act, land, building and machinery of Hariom Chemicals Pvt., Ltd., have been disposed of by respondent no.1. By disposing of the said assets, respondent no.1 Corporation had received a sum of Rs.21 Lakhs. As the entire amount payable by Hariom Chemicals Pvt., Ltd., could not be recovered by respondent no.1, respondent no.1 has started taking action against the guarantors. Respondent no.1 has given notice under Section 29 to the petitioner so that necessary action for recovery of the dues of Hariom Chemicals Pvt., Ltd., can be recovered from the properties mortgaged by the petitioner as collateral security for recovery of the dues of Hariom Chemicals Pvt., Ltd., whose debt had been guaranteed by the petitioner.

4. Learned advocate Shri Parekh appearing for the petitioner has submitted that respondent no.1 Corporation is not competent to take possession of the assets of the petitioner, who is a guarantor. It has been submitted by him that a Civil Suit has already been filed by the principal debtor, i.e. Hariom Chemicals Pvt., Ltd., and as the said suit is pending, it is not open to respondent no.1 - Corporation to make any effort to recover any amount of debt from the petitioner i.e. the guarantor. According to him, first of all the amount of dues must be recovered from the principal debtor.

5. It has been thereafter submitted by him that respondent no.1 Corporation has acted in a malafide manner. It is his case that the assets of Hariom

Chemicals Pvt., Ltd., were worth Rs.93 Lakhs but the said assets have been sold by respondent no.1 Corporation for a meager amount of Rs.21 Lakhs. According to learned advocate Shri Parekh, only on account of negligence and malafide intention of respondent no.1 - Corporation, the assets worth Rs.93 Lakhs belonging to Hariom Chemicals Pvt., Ltd., have been disposed of for a small amount.

5.1. Learned advocate Shri Parekh has also relied upon the judgments delivered in the case of M/s.Tirupati Plywood Product (P) Ltd., & Anr. v. The Pradeshik Industrial Investment Corporation of Uttar Pradesh Ltd., & Ors. reported in A.I.R. 1997 (Allahabad) 364 and in the case of the Maharashtra State Financial Corporation v. M/s. Suvarna Board Mills & Anr., so as to substantiate his case that the amount to be recovered by respondent no.1 - Corporation cannot be recovered from the petitioner - guarantor.

6. On the other hand, learned advocate Shri H.S. Munshaw appearing for respondent no.1 - Corporation has submitted that all possible efforts have been made by respondent no.1 - Corporation for recovering the amount from Hariom Chemicals Pvt., Ltd., and as respondent no.1 - Corporation could not recover the entire amount of dues payable by Hariom Chemicals Pvt., Ltd., now respondent no.1 - Corporation is making all effort to recover the said amount from the guarantor who had guaranteed repayment of dues of Hariom Chemicals Pvt., Ltd.

7. It has been submitted by learned advocate Shri Munshaw that according to the provisions of Section 29 of the Act, it is open to respondent no.1 - Corporation to recover the amount even from the guarantor. He has also drawn my attention to the provisions of Section 128 of the Indian Contract Act, 1872, which refers to the nature of liability of the surety. It has been submitted by him that the liability of the surety of the guarantor is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. According to him, in the instant case, there was no contract contrary to what has been stated in the provisions of Section 128 of the Contract Act and, therefore, all the guarantors are liable to make the payment like the principal debtor.

8. It has been also submitted by him that one of the guarantors i.e. Kantibhai M. Patel had also been served with such a notice. His legal heirs had challenged the validity of the said notice by filing Special Civil Application no.1620 of 2001. After hearing the learned advocate of the guarantor, this Hon'ble Court had

rejected the petition by an order dated 11.12.2001. Being aggrieved by the said order passed by this Court, heirs of the said guarantor had filed Letters Patent Appeal no.48 of 2002. The said L.P.A. was argued at length by learned advocate Shri Parekh, who is appearing for the present petitioner. As the Hon'ble Court did not find any substance in the submissions made by learned advocate Shri Parekh, the Hon'ble Court was inclined to reject the appeal and, therefore, the said appeal had been withdrawn by learned advocate Shri Parekh. Thus, it has been submitted, that the validity of the notice which is being challenged in this petition has already been upheld by the Division Bench of this Court in Letters Patent Appeal no.48 of 2002 on 09.07.2002.

9. Learned advocate appearing for respondent no.1 Corporation has relied upon the judgment of the Orissa High Court in the matter between Ms.K.T. Sulochana v. Managing Director, Orissa State Financial Corporation & Ors. reported in A.I.R. 1992 (Orissa) 157 and the judgment of Kerala High Court in the matter between Thressiamma Verghese v. Kerala State Financial Corporation & Ors., reported in A.I.R. 1986 (Kerala) 222.

10. It has been further submitted by learned advocate Shri Munshaw that reference to the Civil Suit which has been filed by the principal debtor is absolutely irrelevant especially in view of the fact that substantial assets of the principal debtor have already been sold by respondent no.1 - Corporation during the pendency of the said suit as well as this petition.

11. It has been lastly submitted by learned advocate Shri Munshaw that due publicity was given when the assets of Hariom Chemicals Pvt., Ltd., were to be sold by holding an auction and for that purpose public notice had been issued by respondent no.1 - Corporation. A copy of the said public notice is at annexure-C to the affidavit-in-reply filed by respondent no.1 Corporation. According to him, possibly the assets of Hariom Chemicals Pvt., Ltd., had been overvalued. Inspite of all possible efforts, respondent no.1 Corporation could secure only Rs.21 lakhs from the said assets and, therefore, respondent no.1 - Corporation is making efforts to recover the unpaid dues of Hariom Chemicals Pvt., Ltd., from the guarantors including the petitioner.

12. It has been submitted by him that impugned notice dated 18.12.1999 has already been upheld by the Division Bench of this Court. This Court should not take a

contrary view and the petition should be rejected.

13. I have heard the learned advocates at length. Looking to the law laid down by the judgments referred to by the learned advocates, in my opinion, the learned Single Judge of this Court in Special Civil Application no.1620 of 2001 on 11.12.2001 had rightly come to a conclusion that it is open to respondent no.1 Corporation to initiate action against the petitioner and other guarantors like the petitioner. The said view has not been set aside by the Division Bench.

14. In my opinion, pendency of the Civil Suit filed by the principal debtor has nothing to do with this petition. In my opinion, as the nature of liability of the guarantor is co-extensive with that of the principal debtor, it is always open to respondent no.1 Corporation to take appropriate action against the guarantor for recovering the unpaid dues of the principal debtor.

15. Upon perusal of the pleadings, it appears that it was not possible for respondent no.1 - Corporation to fetch more than Rs.21 lakhs from the assets like building, land and machinery belonging to Hariom Chemicals Pvt., Ltd., and, therefore, it cannot be said that respondent no.1 Corporation acted in a malafide manner while disposing of some of the assets of the principal debtor for Rs.21 lakhs. It appears that public advertisement was given, but only three offerers had come forward for purchase of the said assets. It appears that initially the amount offered by the highest offeror was hardly Rs.11,11,111=00, but after inter-se bidding, someone purchased the assets for Rs.21 lakhs. Simply because less amount had been recovered by respondent no.1 Corporation, it cannot be said that respondent no.1 Corporation had acted in a malafide manner. As a matter of fact there are all chances that Hariom Chemicals Pvt., Ltd., might have overvalued its assets or the assets might not be worth its book value on account of rusting or afflux of time.

16. In the instant case, sufficient notice had been given to the petitioner. He could not make any grievance with regard to violation of any of the principles of natural justice. Actions initiated by the respondent no.1 - Corporation do not appear to be illegal or unjust.

I do not find any substance in the contentions raised by learned advocate Shri Parekh and, therefore, the petition is rejected. Notice is discharged. Ad-interim relief granted earlier stands vacated.

[A.R. DAVE, J.]

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